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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,856	03/23/2001	John Zimmerman	US 010094	5812

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BRIARCLIFF MANOR, NY 10510

EXAMINER

SHANNON, MICHAEL R

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/815,856

Applicant(s)

ZIMMERMAN, JOHN

Examiner

Michael R. Shannon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-18 and 21-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,2,4-9,11-18 and 21-24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see pages 7-10, filed 29 April 2005, with respect to the rejection(s) of independent claim(s) 1, 8, 15, 16, and 17 under 35 USC 102(e) and 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made with regards to Vamparys (WO 01/15449 A1) and Herz (USP 5,758,257), both cited previously by examiner, in view of Gerba et al (USP 6,445,398), cited by examiner.

The argument set forth on pages 7-10 relates to the act of reporting a recommendation to a user through a celebrity agent while simultaneously displaying an image of the celebrity agent. It is true that neither Vamparys nor Herz teach the display of an image of the celebrity agent while simultaneously recommending programs to a user through the celebrity agent. However, due to the fact that this limitation is newly added to the claims, the following rejection is made final, necessitated by the applicant's amendment. The Vamparys reference does teach making recommendations to a user through an agent while Herz suggests the use of a celebrity agent. The Gerba reference is used to suggest the display of the agent while simultaneously recommending programs.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4-9, 11-18, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vamparys (WO 01/15449 A1), cited previously by examiner, in view of Herz (USP 5,758,257), cited previously by examiner, in further view of Gerba et al (USP 6,445,398), cited by examiner.

Regarding claim 1, the claimed "method for making a recommendation in a lifestyle recommendation machine" is met as follows:

- The claimed step of "generating a user profile based on explicit and/or implicit directions of a user" is met by claim 1(c) [Page 21], which declares "means for collecting explicit and/or implicit information in program metadata from user interaction therewith".
- The claimed step of "making a recommendation for an item, service, and/or event based on the user profile" is met by claim 1(g) [Page 21], which declares "means for transmitting a list of program recommendations for users to user terminals for display"
- The claimed step of "reporting the recommendation to the user through a celebrity agent while simultaneously displaying an image of the celebrity agent" is met by claim 4 [Page 22], which declares that "the means for transmitting a list of program recommendations for users to user terminals are compromised in a user agent system." The fact that the user agent system is a celebrity agent and that the celebrity agent is simultaneously

displayed as an image is not met by the Vamparys reference. The Herz reference teaches that the user could adopt the viewing preferences and profile of a celebrity and get recommendations about shows based on that celebrity profile [col. 48, line 55 – col. 49, line 6]. Furthermore, the Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300 that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a celebrity as the agent, in order to appeal to people's interest in celebrities and their ability to align themselves with celebrity-picked favorite television shows.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 2, the claimed recommendation being a recommendation of television programming is met by the discussion of a program being defined as a television program [Page 1, lines 5-7].

Regarding claim 4, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 1. Neither the Vamparys nor Herz references teach that the "image is a video of the celebrity agent and the reporting step comprises playing accompanying audio which announces the recommendation." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the

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video of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300 that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. The fact that the reporting step comprises playing accompanying audio that announces the recommendation is met inherently by the discussion of the display of the animated, taped, or live video host. It is commonly understood in the art that video contains audio information as well as display information. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 5, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 1. Neither the Vamparys nor Herz references teach that the "image is a still image of the celebrity agent." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the still image of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300, which could conceivably include still images of hosts, that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host (or still images of hosts) for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

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Regarding claim 6, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 5. Neither the Vamparys nor Herz references teach that the "reporting step further comprises displaying a textual message which announces the recommendation." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the textual message of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300, with a textual message (see Figure 12), that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host (with the textual message) for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 7, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 5. Neither the Vamparys nor Herz references teach that the "reporting step further comprises playing accompanying audio which announces the recommendation." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the video of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300 that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. The fact that the reporting step comprises playing accompanying audio that announces the recommendation is met inherently by the discussion of the display of the animated, taped, or live video host. It is commonly

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understood in the art that video contains audio information as well as display information. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 8, the claimed "lifestyle recommendation device" is met as follows:

- The claimed "means for generating a user profile based on explicit and/or implicit directions of a user" is met by claim 1(c) [Page 21], which declares "means for collecting explicit and/or implicit information in program metadata from user interaction therewith".
- The claimed "means for making a recommendation for an item, service, and/or event based on the user profile" is met by claim 1(g) [Page 21], which declares "means for transmitting a list of program recommendations for users to user terminals for display"
- The claimed "reporting means for reporting the recommendation to the user through a celebrity agent while simultaneously displaying an image of the celebrity agent" is met by claim 4 [Page 22], which declares that "the means for transmitting a list of program recommendations for users to user terminals are compromised in a user agent system." The fact that the user agent system is a celebrity agent and that the celebrity agent is simultaneously displayed as an image is not met by the Vamparys



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reference. The Herz reference teaches that the user could adopt the viewing preferences and profile of a celebrity and get recommendations about shows based on that celebrity profile [col. 48, line 55 – col. 49, line 6]. Furthermore, the Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300 that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a celebrity as the agent, in order to appeal to people's interest in celebrities and their ability to align themselves with celebrity-picked favorite television shows. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 9, Vamparys, Herz, and Gerba teach all of that which is discussed above with regards to claim 8. Neither Vamparys nor Herz teach that the lifestyle recommendation device can be a television programming storage device. Gerba discloses that the system may include a VCR for recording television programming [col. 8, lines 58-65]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a storage device (such as a VCR) into the system, in order to make recording and later viewing easier and more accessible to the user.

Regarding claim 11, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 8. Neither the Vamparys nor Herz references teach that the "image is a video of the celebrity agent and the reporting step comprises playing accompanying audio which announces the recommendation." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the video of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300 that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. The fact that the reporting step comprises playing accompanying audio that announces the recommendation is met inherently by the discussion of the display of the animated, taped, or live video host. It is commonly understood in the art that video contains audio information as well as display information. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 12, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 8. Neither the Vamparys nor Herz references teach that the "image is a still image of the celebrity agent." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the still image of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300, which could conceivably include still images of hosts, that introduces the viewer to upcoming

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suggested programs [col. 18, lines 53-59]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host (or still images of hosts) for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 13, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 12. Neither the Vamparys nor Herz references teach that the "reporting step further comprises displaying a textual message which announces the recommendation." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the textual message of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300, with a textual message (see Figure 12), that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host (with the textual message) for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 14, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 12. Neither the Vamparys nor Herz references teach that the "reporting step further comprises playing accompanying audio which announces the recommendation." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the video of the celebrity agent reporting the

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recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300 that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. The fact that the reporting step comprises playing accompanying audio that announces the recommendation is met inherently by the discussion of the display of the animated, taped, or live video host. It is commonly understood in the art that video contains audio information as well as display information. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 15, the claimed features are met similarly to those features as discussed in the rejections to claims 1 and 8 (see above).

Regarding claim 16, the claimed features are met similarly to those features as discussed in the rejections to claims 1 and 8 (see above).

Regarding claim 17, the claimed features are met similarly to those features as discussed in the rejections to claims 1 and 8 (see above).

Regarding claim 18, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 17. Vamparys does not teach that a celebrity profile can be downloaded and used instead of the user profile. Herz discloses that a celebrity profile can be downloaded from an external source and used to suggest programming [col. 48, line 55 – col. 49, line 6]. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the user profile with that

of a celebrity profile downloaded from an external source, in order to appeal to people's interest in celebrity programming choices.

Regarding claim 21, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 17. Neither the Vamparys nor Herz references teach that the "image is a video of the celebrity agent and the reporting step comprises playing accompanying audio which announces the recommendation." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the video of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300 that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. The fact that the reporting step comprises playing accompanying audio that announces the recommendation is met inherently by the discussion of the display of the animated, taped, or live video host. It is commonly understood in the art that video contains audio information as well as display information. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 22, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 17. Neither the Vamparys nor Herz references teach that the "image is a still image of the celebrity agent." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the still image of the celebrity agent reporting the recommendations. The Gerba reference

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teaches a host tool, which displays an animated, taped, or live video host 300, which could conceivably include still images of hosts, that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host (or still images of hosts) for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 23, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 17. Neither the Vamparys nor Herz references teach that the "reporting step further comprises displaying a textual message which announces the recommendation." While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the textual message of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300, with a textual message (see Figure 12), that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host (with the textual message) for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

Regarding claim 24, the Vamparys, Herz, and Gerba references teach all of that which is discussed above with regards to claim 17. Neither the Vamparys nor Herz references teach that the "reporting step further comprises playing accompanying audio

which announces the recommendation.” While Herz does suggest the use of a celebrity profile, he does not go so far as to suggest the video of the celebrity agent reporting the recommendations. The Gerba reference teaches a host tool, which displays an animated, taped, or live video host 300 that introduces the viewer to upcoming suggested programs [col. 18, lines 53-59]. The fact that the reporting step comprises playing accompanying audio that announces the recommendation is met inherently by the discussion of the display of the animated, taped, or live video host. It is commonly understood in the art that video contains audio information as well as display information. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the taped, animated, or live video host for introducing suggested programming, in order to assist the viewer in reviewing programming choices and recommendations of the celebrity.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael R. Shannon who can be reached at (571) 272-7356 or Michael.Shannon@uspto.gov. The examiner can normally be reached by phone Monday through Friday 8:00 AM – 5:00PM, with alternate Friday's off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at (571) 272-7353.

**Any response to this action should be mailed to:**

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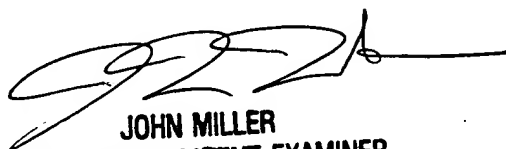
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is **(571) 272-2600**.

Michael R Shannon  
Examiner  
Art Unit 2614

Michael R Shannon  
July 11, 2005

  
**JOHN MILLER**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**